

2. Plaintiff PIIC is a Pennsylvania corporation with its principal place of business in

Pennsylvania.

3. Defendant Bellin is Wisconsin corporation with its principal place of business in Green Bay, Wisconsin.

4. Defendant Kinsey & Kinsey is an Illinois corporation with its principal place of business in Glen Ellyn, Illinois. Kinsey is a nominal defendant and a necessary party to this litigation because Kinsey is an insured party under a Policy of insurance sold by PIIC to Kinsey and PIIC seeks a declaration from this Court regarding coverage under the Policy for the Bellin/Kinsey dispute as it pertains to a provision in a confidential settlement agreement (the “Thome Settlement”).

5. Brian Thome is not party to this action, but Thome was a defendant along with Kinsey in a lawsuit brought by Bellin in Wisconsin. Thome and PIIC entered into the confidential Thome Settlement with Bellin during the trial of the Bellin Lawsuit. The confidential Thome Settlement is the subject of this action.

6. Pursuant to 28 U.S.C. § 1332(a), this Court has subject matter jurisdiction over this dispute because there is complete diversity between the plaintiff and the defendants herein, and the amount at issue exceeds \$75,000, exclusive interest and costs.

7. This court has personal jurisdiction over Bellin because Bellin has filed a “Citation to Discover Assets to a Debtor” against Kinsey in the Circuit Court in Du Page County, Illinois, in an effort to enforce a judgment against Kinsey that Bellin obtained in the Bellin/Kinsey litigation. Bellin has voluntarily and purposefully availed itself of the judicial process in Illinois and in the Northern District in an effort to resolve its differences with Kinsey concerning the Bellin/Kinsey judgment.

8. Further, pursuant to 28 U.S.C. § 1391, venue is proper in this District because the defendants are engaged in an effort to resolve their dispute concerning Bellin’s judgment in the

Northern District.

BACKGROUND STATEMENT OF FACTS

9. PIIC issued a claims-made Cover Pro Policy No. PHSD1161594 to Kinsey with a Policy Period of 8/20/2016 to 8/20/2017 (the “2016 Policy”). A true and correct copy of the 2016 Policy with premium information redacted is attached hereto as Exhibit A.

10. The scope of coverage under the 2016 Policy is at issue in the present dispute in regard to a provision in the confidential Thome Settlement.

The Bellin Lawsuit

11. On March 19, 2018, Bellin filed the lawsuit captioned *Bellin Memorial Hospital v. Brian Thome, et al.*, Case No. 2018CV348, against Kinsey, Brad Kinsey (an individual), and Thome in the Circuit Court for Brown County, Wisconsin (the “Bellin Lawsuit”). A copy of the Complaint filed in the Bellin Lawsuit is attached hereto as Exhibit B.

12. The Bellin Lawsuit alleged various tort and contract claims against each of the defendants.

13. PIIC provided a defense to each of the defendants in the Bellin Lawsuit and continues to provide a defense for Kinsey.

14. During the trial of the Bellin Lawsuit, Bellin and Thome reached a settlement of their dispute and with PIIC entered into the confidential Thome Settlement, which is attached as Exhibit C hereto, and filed under seal.

15. As Kinsey’s insurer, and as a party to the Thome Settlement, PIIC has an interest in resolving the Bellin/Kinsey dispute on favorable terms for its insured and in a manner that is in accord with the terms of the Thome Settlement and which provides Kinsey with any benefit from the Thome Settlement to which it may be entitled.

16. After Thome settled with Bellin, the Bellin Lawsuit was tried to verdict with the remaining defendants. The jury found Kinsey liable on certain claims and the court entered final judgment. The verdict and judgment are attached as Exhibit D.

17. Those claims for which the jury found against Kinsey and in favor of Bellin are insurable claims under the 2016 Policy.

18. Bellin has moved in the Circuit Court of DuPage County, Illinois, to collect the judgment against Kinsey.

19. PIIC seeks a declaration concerning coverage for Kinsey in connection with the Bellin/Kinsey judgment under the 2016 Policy and a declaration concerning the enforcement of the confidential Thome Settlement.

COUNT I – DECLARATORY JUDGMENT UNDER 28 USC § 1331

CONFIDENTIAL SETTLEMENT

20. Philadelphia repeats and realleges Paragraphs 1 to 19 as if set forth fully herein.

21. Enforcement of the confidential Thome Settlement is material to the resolution of the Bellin/Kinsey judgment. As Kinsey's insurer, and as a party to the Thome Settlement, PIIC has an interest in the resolution of Bellin/Kinsey dispute and an interest in enforcement of the Thome Settlement.

22. An actual controversy exists between and among PIIC, Bellin, and Kinsey as to resolution of the Bellin/Kinsey judgment and the enforcement of the Thome Settlement.

WHEREFORE, Philadelphia Indemnity Insurance Company respectfully requests this Honorable Court to issue an order:

- (a) declaring that the Bellin/Kinsey judgment is an insured claim under the 2016 Policy; and

- (b) declaring that the confidential portions of the confidential Thome Settlement are binding upon and enforceable against Bellin, and that the Thome Settlement operates to resolve any dispute between Bellin and Kinsey concerning the Bellin/Kinsey judgment; and
- (b) awarding Philadelphia Indemnity Insurance Company such other and further relief as the Court may deem just and proper.

PHILADELPHIA INDEMNITY INSURANCE
COMPANY

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